

Decision 04-04-002 April 1, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U 338-E) for Authority to Lease Certain Optical Fibers to Sprint Communications Company, LP, a limited partnership organized in Delaware.

Application 03-11-027
(Filed November 26, 2003)

O P I N I O N

1. Summary

This decision grants Southern California Edison Company (SCE) authority under Pub. Util. Code § 851 to enter into a lease agreement and five associated leases, called “product orders,” with Sprint Communications Company, LP (Sprint). The leases are for use of optical fibers within five existing SCE-owned fiber optic cable rings in Los Angeles, Orange, Riverside and San Bernardino counties. Sprint will use the leased fibers to expand its facilities-based telecommunications service in southern California. We also approve SCE’s request to enter into additional product orders with Sprint under the master lease agreement, subject to Commission approval through the advice letter process rather than through § 851 applications. We note that SCE has agreed to a number of safeguards in these advice letter filings based on recommendations of the Commission’s Office of Ratepayer Advocates (ORA), and we incorporate those safeguards in our order. This proceeding is closed.

2. Background and Summary of Request

The terms and conditions of the proposed leases between SCE and Sprint are set forth in a Metropolitan Area Network Fiber Optic Lease and Maintenance Agreement (the Lease Agreement) dated July 2, 2003, and five associated product orders, one for each of the fiber optic cable rings or partial rings that SCE proposes to lease to Sprint. Copies of the Lease Agreement and the product orders are attached to the application as Exhibits 1-6.

The Lease Agreement provides a detailed framework for the lease of SCE-owned fiber optic cables to Sprint. The five product orders set forth the specific routes that Sprint will lease upon Commission approval of this application.

SCE states that the Lease Agreement and product orders presented in this application are part of SCE's efforts to generate additional revenues from utility assets, while also ensuring that ratepayers share in those revenues without risk.

3. Outline of the Agreements

The Lease Agreement sets forth a process for Sprint or its affiliates¹ to use available capacity on SCE's fiber optic network. It also sets forth Sprint's standards and specifications for the configuration of leased fiber rings. The Lease Agreement specifies SCE's obligation to maintain and repair the leased cables and provides penalties in the form of outage credits and termination rights if the fiber does not meet agreed-upon operating parameters.

The Lease Agreement provides that no product order constitutes a lease until the Commission approves both the Lease Agreement and the relevant

¹ Sprint affiliates are defined in the Lease Agreement as companies that control, are controlled by, or are under common control with Sprint.

product order. Until Commission approval is given, Sprint cannot connect to the fibers or otherwise make use of them.

The term of each of the five product orders is for a fixed period of years. Sprint must pay monthly charges for each product order, beginning after the Commission approves the product order and Sprint has accepted the fiber. In addition, Sprint is to pay monthly maintenance fees and one-time building entrance charges. The five product orders that are part of this application are for dark fiber. They are designated as product orders for Ring No. 1, Ring No. 2, Ring No. 5, Ring No. 6, and Ring No. 7, with the assigned ring numbers corresponding to Sprint's ring numbering system for the Los Angeles market. Each of the product orders identifies the number of optical fibers on an existing fiber optic cable, the location and length of the fiber lease, and the term of the lease and the monthly fee for use of the fiber.

4. Commission Approval Under § 851

ORA supports Commission approval of the Lease Agreement and the five product orders described in the application.

SCE asserts that there are several benefits in allowing Sprint to lease SCE's dark fiber:

- The leases will not affect SCE's electric utility service.
- Leasing excess capacity will enable fuller use of utility assets in ways that are compatible with the electric utility operations.
- Sprint's use of the facilities will enhance competition in the telecommunications market, expand the state's telecommunications infrastructure, and help attract and maintain businesses in California that want to use advanced services.
- Gross revenues from the leases will be shared by shareholders and ratepayers on a 90%-10% basis, respectively, consistent

with the gross revenue sharing mechanism for non-tariffed products and services established in Decision (D.) 99-09-070.

Section 851 of the Public Utilities Code requires Commission authorization before a utility may “sell, lease, assign, mortgage, or otherwise dispose of or encumber” utility property. The Commission has described the purpose of § 851 as follows:

The design of PU Code § 851 is to prevent the impairment of the public service of a utility by the transfer of its property into the hands of agencies incapable of performing an adequate service at reasonable rates or upon terms which will bring the same undesirable results. Transfers and reorganizations often are made which leave the utility so burdened with fixed interest charges and crippled financially that it is totally unable to perform its duty to the public; and to prevent the bringing about of such conditions, the Commission has been given the authority to regulate the transfer and encumbrance of its property by a utility. (D.96-04-045, at 9; 65 CPUC2d 324, 328.)

The Commission reviews applications for transactions submitted pursuant to § 851 to ensure the following:

- That the transaction “will not impair the utility’s ability to provide service to the public.”
- That “any revenue from the transaction is accounted for properly.”
- That the transaction does not have “any anticompetitive effects and does not result in cross-subsidization of nonregulated enterprises.” (65 CPUC2d at 329.)

ORA concludes, as do we, that SCE’s application to lease currently available capacity of its fiber rings to Sprint meets the review criteria of § 851. First, SCE states that it does not have any plans to use the facilities for its electric utility operations during the terms of the product leases. SCE further assures us that, to the extent the facilities later become necessary for electric utility

operations, SCE will either renegotiate use of the fibers with Sprint or will expand existing capacity at no cost to ratepayers.

Second, revenues from the leases will be treated as Other Operating Revenue and will be subject to the gross revenue sharing mechanism adopted in D.99-09-070.

Third, with regard to the potential for cross-subsidization, SCE has affirmed in discussions with ORA that all incremental capital investments for uses other than the electric utility are the responsibility of the shareholders, and SCE has committed to follow the cost tracking and allocation rules for its telecommunications services that the Commission adopted in D.98-12-083. ORA adds, however, that only an audit can verify whether SCE is truly booking its costs and revenues properly, and it recommends that the Commission include review of these transactions in its routine audits of SCE conducted pursuant to Pub. Util. Code §314.5.

Finally, neither SCE, through its telecommunications unit (Edison Carrier Solutions) nor Sprint is a dominant telecommunications carrier in California. Allowing SCE to provide available fiber network to a non-affiliated competitive local exchange carrier like Sprint is therefore not likely to pose an anti-competitive threat. On the contrary, it is consistent with this Commission's goal of promoting competition in the local telecommunications market.

5. Future Sprint Product Orders

In addition to seeking approval of the Lease Agreement and five product orders, SCE and Sprint request authority to enter into new product orders, subject to the same Lease Agreement, through the Commission's advice letter process. In the future, the application states that SCE may seek to lease fiber that

exists now, or it may install new fiber optic cable and then seek to enter into a product order.

The construction of new facilities by SCE, including the laying of fiber optics, requires Commission authorization, including application of the California Environmental Quality Act (CEQA). Some construction may fall within authorization already granted to SCE. For future Sprint leases, SCE asks for approval via advice letter for both existing fiber and for fiber that SCE has already received Commission authorization to construct. However, SCE's request does not include future leases relating to new fiber construction for which SCE has not yet obtained authorization. Any such application would be made through a § 851 application.

If SCE is permitted to file future product orders under the Lease Agreement through the advice letter process, it proposes to supplement the advice letters with substantial additional information. This information, as modified by ORA, is set forth as requirements in our order granting approval of advice letter filings of future product orders.

6. Advice Letter vs. § 851 Applications

A utility is prohibited from entering into transactions like those here “without first having secured from the commission an order authorizing it to do so.” (Pub. Util. Code § 851.) However, § 853(b) allows the Commission to exempt a utility from § 851 requirements if it finds that the provision “is not necessary in the public interest.”² The Commission also has authority to establish rules relating to the exempted activities that “may include, but not be

² Specially, § 853(b) allows an exemption from Article 6, which contains § 851.

limited to, notification of proposed sale or transfer of assets....” (Pub. Util. Code § 853(b).) In the case of SCE’s application, therefore, the Commission has authority to issue a § 851 order approving the Lease Agreement and the five product orders, and then, under § 853(b), subject certain future product orders to other rules, such as notification, if it is in the public interest.

The Commission’s advice letter process is a more informal process codified in General Order (GO) 96-A. Advice letters generally are submitted to the Commission with tariff sheets that modify a utility’s tariff schedule, and are noticed in the Commission’s Daily Calendar. Interested parties have 20 days from the filing of an advice letter to file a protest, and the Commission may suspend the changes proposed in the advice letter. Absent Commission action suspending the advice letter, the changes proposed by the utility are deemed approved and become effective not less than 30 days after filing.³

As applied to the future product orders proposed by SCE, the advice letter process would provide notice to both the Commission and to interested parties of new product order leases entered into by SCE and Sprint, and would allow for the filing of protests and suspension by the Commission. Absent such action, however, the Commission’s rules would allow the new leases to become effective without a Commission order, thus significantly decreasing the time necessary for obtaining Commission approval under a § 851 application.

³ See GO 96-A at 10 (Section IV.)

7. Advice Letter Approval of Future Product Orders

SCE identifies the following reasons in support of its request to use the advice letter process:

1. The Commission will have already reviewed the detailed framework of the Lease Agreement between SCE and Sprint in this proceeding.
2. The prompt review process that can be accomplished via advice letter is important for Sprint in quickly responding to a competitive telecommunications marketplace. The § 851 application process can take much longer for the Commission to render its decision.
3. The advice letter process reduces the burden on the Commission and the parties but still permits the Commission to review each new product order lease prior to Sprint's access to the fiber.
4. The Commission continues to have the authority to reject a particular product order through the advice letter process and require that the product order be approved through the application process.

ORA recommends that the Commission, as part of its § 851 approval of the Lease Agreement and specific product orders, should allow SCE to submit future product orders involving *existing* fiber – but not new unapproved fiber – through the advice letter process under certain conditions agreed to by SCE and ORA.

ORA states that it generally agrees with SCE's characterization of the advantages of SCE's proposal. Extending the scope of the Commission's approval of this Lease Agreement to additional Sprint product order leases, with notice and an opportunity to review the proposed leases through the advice letter process, will enable the Commission to continue fulfilling its regulatory responsibility, while improving regulatory efficiency. As long as the additional

product order leases confer the same benefits presented by SCE, they will meet the standards that the Commission has traditionally applied to § 851 applications. Minimizing the burdens on both the Commission and parties associated with obtaining Commission approval of those additional product order leases, when the review required is likely to be minimal, is therefore in the public interest. Accordingly, our order today approves the use of the advice letter process, subject to certain conditions specified in our order.

8. Limiting Use of Advice Letter Process

SCE's application also requested that future product orders involving new construction be subject only to the advice letter process and not the § 851 application process. ORA opposes this, recommending instead that the Commission continue to require the filing of an application pursuant to § 851 when new construction is required. After discussion with ORA, SCE agreed to withdraw its request for a more informal process when new construction is involved. Thus, any and all future product orders with Sprint for fiber that was not constructed and owned by SCE by November 26, 2003, even if subject to the Lease Agreement approved in this proceeding, is to be approved only through the Commission's § 851 application process. Our order today memorializes this agreement.

9. Environmental Considerations

The five product orders in this application all involve use of available capacity in existing fiber optic cables. SCE is not authorized to undertake any fiber optic construction as part of these five leases. SCE states that, in the event that a future product order would require construction of new fiber optic routes, SCE will not construct the new route until it receives Commission authorization

to do so. The Commission then would have the opportunity to consider the environmental impact of future product orders.

As to the approval sought here, the Commission has determined in prior decisions⁴ that agreements involving the use of an electric utility's existing infrastructure with only incidental changes qualify for a categorical exemption under CEQA. Section 15301(b) of the CEQA guidelines provides that such agreements do not pose environmental hazards and thus do not require environmental review. More recently, the Commission has affirmed this position in D.00-01-014, in which Pacific Gas and Electric Company (PG&E) sought approval to permit Electric Lightwave, Inc. to install and use fiber optic lines on certain PG&E transmission towers, substations, rights-of-way and other facilities. Because the five product orders here are for existing fiber optic capacity, and the only alteration that will be required is to splice the existing fiber to Sprint's fibers, the categorical exemption of the prior decisions applies here as well.

10. Other Issues Raised by the Application

As part of reviewing this § 851 Application, ORA states that it examined the history of SCE fiber network, referred to by SCE as "SCENet." SCENet was originally built as an "automated monitoring and control network" for SCE's electric services, but was expanded to provide wholesale telecommunications services pursuant to D.98-12-083. In D.98-12-083, the Commission granted SCE authority to provide facilities-based telecommunications services in California, subject to certain conditions. SCE's fiber network has therefore been funded by

⁴ See Decision (D.) 93-04-019, D.94-06-017, D.95-05-039 and D.96-11-058, all involving SCE leases of temporarily available conduit, duct or overhead cable, pole space, and optical fibers.

both ratepayers and shareholders, and is now used for both regulated and non-regulated services. In anticipation of this co-mingling of SCE's regulated and non-regulated fiber assets and their usage, and the potential for cross-subsidy from ratepayers to shareholder-side activities, the Commission adopted "Cost Tracking and Allocation Rules for SCE's Telecommunications Services" in Appendix C of D.98-12-083.

D.98-12-083 requires SCE to file an annual monitoring report with information that allows the Commission to track SCE's implementation of its telecommunications services. In reviewing SCE's most recent annual monitoring report, which was filed on March 31, 2003, ORA states that it discovered two discrepancies between SCE's filing and the Commission's requirements in D.98-12-083. As described below, however, ORA discussed these issues with SCE, and was able to resolve them to ORA's satisfaction after SCE took corrective action and provided certain commitments.

10.1 Allocation Approach for Equipment

In Appendix C of D.98-12-083, the Commission specifies that "existing ratepayer equipment will remain in service exclusively for electric utility operation and new ratepayer-funded equipment will be added for normal growth and replacement purposes" (emphasis added). SCE's most recent monitoring report, however, has changed the word "exclusively" in this sentence to "principally."

In response to ORA's questions, SCE launched an investigation of actual usage of SCENet, the results of which are documented in a letter to ORA dated January 30, 2004. SCE states that it determined that more than 99% of the routes funded by ratepayers have complied with the Commission's directive. SCE found that a minor part of its ratepayer-funded equipment, in a route between

Grand Terrace and Moreno Valley, was being used for commercial telecommunications. SCE also stated that it has taken corrective measure to install shareholder-funded equipment, and will switch its commercial usage to the new equipment as soon as installation and testing are complete. SCE further states that it will retrain its network designers and installers on the requirements for SCE's network contained in Appendix C of D.98-12-083.

10.2 Allocation Approach for Telecommunications Control Center

Appendix C of D.98-12-083 provides the following description about allocating TCC cost between ratepayers and shareholders:

The Telecommunications Control Center (TCC) is the operations hub for SCE's telecommunications network and is used to monitor and control network activity. Because it would be difficult to track actual incremental TCC costs associated with the telecommunications services business, as a proxy for those costs, TCC costs, including support systems and personnel, will be allocated between ratepayers and shareholders based on the percentage of total maintenance activity attributable to ratepayer-and-shareholder funded fiber optic cable and equipment. Maintenance activity will be determined from TCC written "trouble tickets" or other measures.⁵

In contrast, SCE's monitoring report described its allocation methodology for TCC as follows:

The TCC is the operations hub for SCE's telecommunications network and is used to monitor and control network activity. Incremental TCC costs associated with the telecommunications

⁵ 84 CPUC.2d at 485.

services business, including support systems and personnel, are identified separately between ratepayers and shareholders. ECS (shareholders) expenses are recorded to its non-utility functions for all upgrades due to the non-utility operation and all excess personnel not required for utility services are charged to shareholder activities.⁶

ORA contended that there appeared to be some discrepancy between the Commission direction and SCE execution with regard to allocating TCC costs. After investigating the matter, SCE submitted a letter to ORA noting that D.98-12-083 had required the use of written “trouble tickets” or other measures to allocate TCC cost under the belief that it would be difficult to track actual incremental TCC costs associated with the telecommunications services business. After the establishment of Edison Carrier Solution, however, SCE found that it was able to develop an accurate incremental cost accounting method to identify and track the actual incremental TCC costs associated with providing non-utility services. SCE therefore chose to use actual incremental TCC costs rather than using TCC trouble tickets as proxies. SCE states that that its current method has benefited ratepayers by \$1.3 million since Edison Carrier Solution was established.

10.3 Resolution of Additional Issues

In general, ORA states that it is satisfied with SCE’s prompt actions to look into the problems and to take corrective measures. The magnitude of the problem initially suggested by the first discrepancy, in which there was a

⁶ Appendix C Annual Report (submitted in compliance with Ordering Paragraph 4 of D.98-12-083), Southern California Edison (March 31, 2003) (2003 Monitoring Report) at Exhibit 5, third page (unnumbered).

question about whether ratepayer-funded equipment has been used “exclusively” for regulated activities, has been mitigated by SCE’s investigation. ORA states that, while SCE was unable to ascertain how the discrepancy in language occurred, in light of SCE’s current awareness of the issue and its prompt corrective action, it is unlikely that this problem will recur.

With respect to the second discrepancy, ORA acknowledges that the Commission required the use of “trouble tickets” or other measures to allocate TCC costs. This language appears to allow flexibility in the allocation method SCE should use. In fact, SCE’s method for allocating TCC costs seems to more accurately reflect how the costs are incurred, and the end result actually benefits ratepayers. Therefore, at this time, ORA does not recommend reversion back to cost allocation using trouble tickets.

Finally, ORA notes that SCE has acknowledged that it should not have made a cost allocation change without consulting Commission staff. SCE has committed to refrain from making other changes to the Commission’s Appendix C requirements without first discussing them with staff and determining whether the change is justified.

11. Conclusions

Like ORA, this Commission supports a streamlined process that can improve regulatory efficiency as well as reduce the burden on interested parties and on our staff. Nevertheless, improving regulatory efficiency should not undermine the Commission’s regulatory authority or become an obstacle for the Commission in fulfilling its regulatory responsibilities. Thus, using as a framework the Commission’s analysis of the Lease Agreement and the five proposed product order leases pursuant to § 851, we will follow ORA’s

recommendation and extend our approval to future product order leases via advice letter, but only in conjunction with certain substantive and procedural conditions that SCE and ORA have agreed will be followed. Those conditions are set forth in our order.

In addition to conditions that SCE should meet, ORA recommends that the Commission require that future audits of SCE pursuant to § 314.5 review SCE's actual cost allocation of its fiber network. Such an investigation is the appropriate regulatory mechanism by which the Commission can ensure that there is no cross-subsidization between ratepayers and shareholders, and that co-mingling of assets does not otherwise harm the public interest.

The conditions specified in our order reflect the concerns discussed by ORA and SCE. The conditions also identify information that SCE should submit for future product order leases to enable the Commission and its staff to assess the proposed product orders quickly in the context of how SCE's fiber is being used. The conditions fall into the following categories:

- Limitations on use of the advice letter process;
- Continuing obligations of SCE;
- Notifications to Commission staff;
- Information to be filed with advice letter; and
- Information to be submitted to Commission staff concurrently with advice letter.

12. Categorization of Proceeding

In Resolution ALJ 176-3125, dated December 19, 2003, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude

that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3125.

13. Comments on Draft Decision

With ORA's suggested changes and applicants' agreement that those changes should be made, this is an uncontested matter in which the decision grants the relief requested. However, because the decision addresses matters not contained in the application, the draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. The only party filing comments was ORA, stating that it supported the proposed decision in full.

14. Assignment of Proceeding

Michael Peevey is the Assigned Commissioner and Glen Walker is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Under the Lease Agreement and five product orders, Sprint will pay monthly fees to SCE for the use of available capacity in existing SCE-owned fiber optic cable rings.
2. Revenue from these lease agreements will be booked as Other Operating Revenue, with proportionate sharing between shareholders and ratepayers pursuant to D.99-09-070.
3. The proposed agreements provide that the lease agreements will have no effect on SCE's ability to serve its customers.
4. The proposed agreements make productive use of what is currently available fiber optic capacity.

Conclusions of Law

1. Because the agreements here involve the use of SCE's existing infrastructure with only incidental changes, the contemplated use is exempt from CEQA review under CEQA guideline 15301(b).
2. SCE should be permitted to submit future product orders under this Lease Agreement for Commission approval through the advice letter process, subject to the conditions set forth in the Ordering Paragraphs.
3. Because there are no outstanding issues remaining before the Commission in A.03-11-027, the docket should be closed.

O R D E R

IT IS ORDERED that:

1. The application of Southern California Edison Company (SCE) for authority to enter into the Metropolitan Area Network Fiber Optic Lease and Maintenance Agreement (Lease Agreement) and five associated product order leases with Sprint Communications Company LP, as more fully described in the application and its exhibits, is approved.
2. SCE is authorized to seek approval of future product orders under the Lease Agreement through the Commission's advice letter procedure, subject to the following additional requirements:
 - a. The product order must be entered into pursuant to the Lease Agreement approved by the Commission in Application (A.) 03-11-027;
 - b. The product order can only involve currently available fiber, the use of which will not interfere with SCE's regulated operations;

- c. The product order must be solely for “existing” dark fiber – fiber that was approved by the Commission, and constructed by SCE, prior to November 26, 2003 (the date upon which A.03-11-027 was filed); and
- d. The product order cannot involve the use of “new” fiber – fiber that was not owned by SCE as of November 26, 2003, or fiber that was constructed after November 26, 2003 (regardless of whether Commission approval for the new construction was given prior to November 26, 2003). Leases for the use of “new” fiber require the filing of an application pursuant to Pub. Util. Code § 851.

3. The sharing of revenue between shareholders and ratepayers of SCE derived from the telecommunications leases entered into pursuant to the authority granted herein shall apply in accordance with the allocation rules adopted in Decision (D.) 99-09-070. The following further requirements shall apply:

- a. SCE shall use the cost allocation and tracking processes set forth in D.99-09-070 and Appendix C of D.98-12-083. A minor exception to D.98-12-083 is authorized for the cost allocation methodology for the Telecommunications Control Center (TCC). Incremental TCC costs associated with the telecommunications services business, including support systems and personnel, shall be identified separately between ratepayers and shareholders. The expenses of Edison Carrier Solutions shall be recorded as expenses for non-utility functions, and thus shall be borne by shareholders. In addition, all upgrades performed for the benefit of non-utility operations, and all excess personnel not required for utility services, shall be charged as non-utility expenses.
- b. SCE shall not make any change to the Commission’s requirements in Appendix C of D.98-12-083 without first discussing them with Commission staff and determining that a proposed change is justified.

- c. To the extent that the leased facilities become necessary for electric utility operations, SCE shall either renegotiate with Sprint regarding the use of the relevant fiber, or shall expand the existing capacity, at no cost to ratepayers, to accommodate the utility's needs to the extent that such needs would have been met if there were no non-utility use of the facilities. All of the costs associated with Sprint-related activities, including maintenance, taxes, franchises, and permits, shall be paid by Sprint consistent with the leases.
- 4. SCE shall implement the following notification requirements in dealing with the Lease Agreement and its product orders:
 - a. SCE shall notify, in writing, the Office of Ratepayer Advocates (ORA), the Commission's Energy Division (Energy), and the Commission's Telecommunications Division (Telco), through their respective assistant directors, of all substantive amendments to, extensions of, or terminations of the leases.
 - b. SCE shall notify, in writing, the assistant directors of ORA, Energy, and Telco of any substantive changes to plant-in-service resulting from implementation of the leases within 60 days of any such changes.
 - c. SCE shall notify, in writing, the assistant directors of ORA, Energy, and Telco if any ratepayer-funded right-of-way that is the subject of the leases ceases to be used and useful for the provision of electric service, or if there are any substantive changes in the right-of-way segments that are the subject of the leases, within 30 days of any such event.
 - d. If any affiliate of SCE enters into an agreement to make direct use of the fiber optic cables that are the subject of the leases, SCE shall notify, in writing, the assistant directors of ORA, Energy, and Telco at least 60 days prior to the commencement of such use. The required notification shall include details of the rates to be charged to SCE or the affiliate, and the accounting principles that will be used to track the costs and payments associated with such use.

5. In submitting additional product orders under the Lease Agreement, SCE shall submit the following information as part of each advice letter:

- a. The Lease Agreement;
- b. All previously approved product orders;
- c. The proposed product order(s);
- d. The total amount of strand or route miles currently being leased to Sprint;
- e. The total annual revenue from all current Sprint product orders;
- f. Confirmation that the lease is for existing SCE fiber (approved by the Commission and constructed by SCE prior to November 26, 2003;
- g. Confirmation that gross revenues from current and proposed Sprint product orders will be shared 90%-10% with shareholders and ratepayers, respectively, as directed in D.99-09-070.

6. In submitting additional product orders under the Lease Agreement, SCE shall submit the following as part of each advice letter:

- a. Table identifying current fiber capacity/strand miles for all fiber optic cable and the associated net plant-in-service ratepayer/shareholder funded dollars;
- b. Table identifying current fiber capacity/strand miles, with ratepayer- and shareholder-funded facilities separately identified, used by:
 - i. SCE for its own electric system or electric utility usage;
 - ii. Edison Carrier Solutions; and
 - iii. Third parties.

- c. Table identifying the same information as in V.B, above, for the fiber optic cable containing the dark fiber that is the subject of all existing and currently proposed Sprint product orders.
- 4. A.03-11-027 is closed.

This order is effective today.

Dated April 1, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I dissent.

/s/ LORETTA M. LYNCH

I reserve the right to file a dissent.

/s/ CARL W. WOOD
Commissioner

Dissenting Opinion of Commissioner Wood
(Southern California Edison Company – Fiber Optics 851
Agenda Item #6, April 01, 2004)

Although I am supportive of efforts to more fully utilize installed fiber optics, I am voting against this order for several reasons. First, despite all of the discussion we have had on this topic over the last couple of years, and despite significant contrary precedent, this decision ignores the broader ratepayer interest concerns inherent in a Section 851 request, and instead merely asks whether the transaction will impair the utility's ability to provide service to the public. I believe this is inappropriate under the law, and inadvisable as a matter of public policy.

Second, although it is unlikely that the proposed lease would produce an anticompetitive result, the proposed decision treats this issue too lightly. It fails to develop the factual underpinnings necessary to make an intelligent decision about the lease's effects on competition.

Finally, I strongly disagree with the conclusion reached in the proposed decision that future leases for the use of existing fiber should be handled through advice letters. The stated purpose, to allow transactions to go forward without a Commission order, is antithetical with the Commission's clear obligation under Section 851. The law states that no such lease is valid without an order from the commission approving it. Parties that rely on this advice letter process do so at their own risk. And the Commission would do so at the risk of abrogating its responsibility to ensure that the particular transaction is in the public interest.

For all of these reasons, I dissent.

/s/ CARL WOOD

Carl Wood
Commissioner

San Francisco, California
April 1, 2004